

CHAPTER 8

GRIEVANCES AND APPEALS FOR PERMANENT EMPLOYEES

Section 1. **Statement of Policy.**

Permanent employees shall have the right to present a grievance or appeal, pursuant to the provisions of this chapter, without coercion, restraint, discrimination or reprisal.

Section 2. **General Provisions.**

(a) Time Periods:

(i) In computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default from which the designated period of time begins shall not be included. The last day of the period so computed shall be included, unless that day is a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded from the computation;

(ii) The Human Resources Administrator may, upon written request and for good cause shown, or at his/her own discretion, extend any time period prescribed by this chapter, provided the written request is received before the expiration of the time period originally prescribed.

(b) Compliance with Procedure. An employee shall forfeit the right to pursue a grievance and / or appeal if the employee fails to follow the procedures prescribed by this chapter.

(c) Waiver of Procedure. Any procedure prescribed by this chapter may be waived by mutual written agreement between the parties. A copy of the agreement shall be forwarded to the Human Resources Administrator or the presiding officer, as applicable.

(d) Designation of Parties. The rights in this chapter apply to permanent employees only.

(e) Representation. An employee may be represented by any person, including legal counsel, at any stage of the grievance and / or appeal process.

(f) Administrative Leave. An employee who is a party or witness in a grievance or appeal, and employee Grievance Committee members, shall be granted administrative leave to participate in the proceeding. An employee who has filed a grievance shall be entitled to a maximum of eight (8) hours of administrative leave to prepare for presentation of the grievance and / or appeal. Prior notice shall be given to the employee's supervisor.

(g) Grievance Committee: Membership and Compensation. Grievance Committee members shall be individuals who have consented to serve as such and who are not parties to the dispute, nor employees from the same agency as either party to the dispute, nor advocates of either party to the dispute. Grievance Committee members shall not have any ex parte communication with the parties to the dispute during the grievance process. Non-employee Grievance Committee members shall serve without compensation but shall be reimbursed for expenses in the same manner and at the same rate as employees.

(h) Grievance Committee Decisions. Decisions of a Grievance Committee shall require a majority vote of the body. No hearing shall be conducted without the presence of all Grievance Committee members, unless stipulated to by the parties. The hearing may be conducted by telephone or other electronic media.

(i) Custody of Records. The Human Resources Administrator shall be the official custodian of all records pertaining to the provisions of this chapter.

(j) Confidential Proceedings. All grievance and appeals proceedings shall be confidential.

(k) Service of Documents. Any person filing a document with the Human Resources Administrator in a grievance and / or appeal proceeding shall serve a copy on all parties and representatives at or before the time the document is filed with the Human Resources Administrator.

(l) Agencies shall provide a report to the Human Resources Division on or before February 28 of each year, in the manner determined by the Human Resources Division, on the number and type of grievances submitted to the Agency Head during the previous year.

Section 3. Definition of Grievance.

(a) "Grievance" means a dispute, between an employee and management of the employee's agency, which involves the interpretation or application of a statute, rule, executive order, or policy concerning personnel practices and/or working conditions.

(b) "Grievance" does not include a dispute, which involves;

(i) Compensation, benefits, contributions, and other conditions, which are beyond the control of the agency head;

(ii) Discrimination;

(iii) Dismissal;

(iv) Involuntary separation due to a reduction in force; or

(v) Performance evaluation ratings.

Section 4. Grievance Procedure Steps.

(a) Within ten (10) days of the event giving rise to the grievance or of the employee having knowledge of the event, the employee may present the grievance in writing to the management employee at the lowest level giving rise to the dispute and the agency head. The grievance shall include a brief statement of fact on which the grievance is based and relief sought.

(b) Within ten (10) days of receiving the written grievance, the agency head or his/her designee and the appropriate management employee at the lowest level giving rise to the dispute shall hold a conference with the employee to resolve the dispute and render a decision, in writing, to the employee within five (5) days after the conference. A decision by the agency head or the designee shall be the final step in the grievance procedure unless the grievance involves a dispute in accordance with Section 4 (d) of this chapter.

(c) In the event the management employee giving rise to the dispute is the agency head and the decision of the agency head is unsatisfactory to the employee and involves allegations concerning violations of a statute, rule, executive order, or policy, the employee shall submit the grievance in writing to the Human Resources Administrator within ten (10) days of receiving the written decision by the agency head.

(i) The Human Resources Administrator shall within five (5) days of receiving the written grievance, forward the issue to the Governor or his designee for investigation in accordance with Executive Order 1997-4.

(d) If the decision of the agency head or the designee is unsatisfactory to the employee and if the grievance involves a disciplinary suspension, an involuntary reassignment due to unsatisfactory work performance, or an involuntary reassignment to a lower grade, the employee may, within ten (10) days of the date of the decision, request the Human Resources Administrator to establish a Grievance Committee to hear the matter. Other matters may be considered by a Grievance Committee at the discretion of the State Human Resources Administrator. All requests shall be submitted, in writing, and shall include the nomination of an individual to serve as a Grievance Committee member. A copy of the request to establish a Grievance Committee shall be provided to the employee's agency head by the employee.

(e) Within five (5) days of the date of a request for the establishment of a Grievance Committee, the Human Resources Administrator or his/her designee shall notify the head of the agency with which the employee has the dispute; and request the nomination of a Grievance Committee member. The agency head shall notify the State Human Resources Administrator or his/her designee of the nomination within five (5) days.

(f) Within five (5) days of receipt of the agency head nomination, the State Human Resources Administrator shall notify the two (2) nominees that they are to serve as Grievance Committee members, and that they shall within five (5) days of receipt of such notice form the Grievance Committee by selecting a third member from a list of agency human resource officers (or other designated individuals) who have agreed to serve as Grievance Committee members. This list is maintained at the Department of Administration and Information, Human Resources Division, Emerson Building, 2001 Capitol Avenue, Cheyenne, WY 82002 and is available for public inspection and copying at cost at the same location. A chairperson and secretary shall be selected from among Grievance Committee members.

(g) Grievance Committee Purpose and Authority.

(i) The purpose of the Grievance Committee is to resolve a dispute, which falls within Section 4(d) of this chapter;

(ii) The Grievance Committee has the authority to affirm, modify, or reverse any action(s) so long as the decisions and recommendations are not in conflict with Personnel Rules, State Statutes, or agency rules and regulations. Decisions of the Grievance Committee are final unless the grievance is appealable in accordance with Section 5 of this chapter.

(h) Grievance Committee Hearings.

(i) Within twenty-five (25) days of the formation of a Grievance Committee, the Grievance Committee shall schedule and hold a hearing or render a decision without a hearing, based solely on the written record;

(A) The hearing shall be confined to those issues provided by the parties in Chapter 8 Section 4(d) and shall not develop into a general inquiry into the policies and operations of an agency. The written record shall constitute and is limited to the documentation provided by the parties in Chapter 8 Section 4(a)(b) and (d);

(B) If the issues raised by either or both parties are such that further proceedings are unnecessary, the Grievance Committee shall submit a written decision to the State Human Resources Administrator who shall forward copies to both parties;

(C) If the issues raised by either or both parties are such that further proceedings are necessary, the Grievance Committee shall initiate a hearing. The hearing shall be concluded within five (5) days of initiation, provided, that the hearing may be extended with the agreement of both parties and a majority of the Grievance Committee. The Grievance Committee shall select a location for the hearing, which is most convenient for the parties and their interests.

(ii) General Provisions for a Grievance Hearing:

(A) The chairperson shall take whatever action is necessary to ensure a fair, orderly, and expeditious hearing;

(B) No record shall be made of the hearing;

(C) The hearing shall not be bound by formal rules of evidence;

(I) Decisions to accept or reject evidence, upon objection by another Grievance Committee member, shall require a majority vote of the Grievance Committee;

(II) Only evidence relevant to the grievance shall be allowed and evidence which is repetitive, will be excluded;

(III) The Grievance Committee may issue requests to produce evidence;

(D) Opening statements may be made, first by the employee or the employee's representative followed by the Agency;

(E) The employee shall present their case first, followed by the Agency;

(F) Witnesses who will give pertinent information to the grievance may be called;

(I) Witnesses shall remain available and not discuss the case with anyone, other than the party for whom they are appearing until after they are excused by the Grievance Committee and the consent of both parties;

(II) Witnesses, except for the parties, shall not remain in the hearing room except when called;

(III) Each party will be given the opportunity at the appropriate times, to ask questions of the witnesses;

(G) Any member of the Grievance Committee may direct questions to any party or witness at any time during the proceedings;

(H) Prior to the conclusion of the hearing, each party may present a brief summary or closing statement, first the employee or the employee's representative followed by the Agency;

(I) If a party does not appear at the hearing, the Grievance Committee may base its decision on a consideration of the documents provided and on the presentation of the case by the party present.

(iii) The Grievance Committee may allow a party at its request to examine items, which the other party intends to submit as evidence in the hearing. Such examination shall be completed at least three (3) days prior to the hearing unless the parties stipulate to a different time;

(iv) Within ten (10) days following conclusion of a hearing, the Grievance Committee shall prepare a written summary statement of the evidence and its findings, decision and recommendations;

(A) Any Grievance Committee members voting in the minority may prepare a minority statement, which shall be a part of the material submitted;

(B) The chairperson shall ensure that all evidence, findings, decisions and minority statements and recommendations are forwarded to the Human Resources Administrator, agency head, employee, and the employee's representative, if any.

Section 5. Personnel Appeals.

(a) Right to Hearing.

(i) An employee may appeal the following agency head decisions:

(A) Dismissal;

(B) Involuntary separation due to a reduction in force;

(ii) Either party may appeal, through a de novo hearing, the following final Grievance Committee decisions:

(A) Involuntary reassignment due to unsatisfactory work performance;

(B) Involuntary reassignment to a lower grade; and

(C) Disciplinary suspension.

(b) Request for Hearing:

(i) Any employee may appeal the agency head's decision or either party may appeal a Grievance Committee decision by filing a notice of appeal with the Human Resources Administrator setting forth the following:

(A) The name and address of the employee and the name and address of the employee's representative if any;

(B) The decision of the agency head or Grievance Committee being appealed;

(C) A statement of the facts on which the appeal is based; and

(D) The relief sought.

(ii) Appeals shall be filed, in writing, within twenty (20) days of the date of the agency head or Grievance Committee's decision;

(A) In order to be timely filed, the Human Resources Administrator shall receive the notice of appeal within the twenty (20) day deadline;

(B) After the filing of a petition for a personnel appeal hearing, such petition may not thereafter be amended as may be allowed by the Wyoming Rules of Civil Procedure.

(iii) The appealing party shall serve a copy of the notice of appeal on the other party and the other party's representative, if any, at the time the notice of appeal is filed;

(iv) The Human Resources Administrator shall immediately forward a file stamped copy of the notice of appeal to the other party and the other party's representative, if any.

(c) Response and Motions Challenging Timeliness or Jurisdiction:

(i) The responding party shall file a response and any motions challenging the timeliness or jurisdiction of the appeal within twenty (20) days of the filing date of the notice of appeal;

(ii) The response and any motions shall be in writing and filed with the Human Resources Administrator;

(iii) The response shall include a statement of the facts on which the appeal is based;

(iv) The responding party shall serve a copy of the response and any motions on the other party and the other party's representative, if any, at the time of filing.

(d) Response to Motion. Any response to a motion filed with the Human Resources Administrator shall be filed within ten (10) days after the motion is filed, and the party filing the response to a motion shall serve a copy of the response on the other party and the other party's representative, if any, at the time of filing.

(e) Human Resources Administrator's Jurisdiction:

(i) The Human Resources Administrator shall have jurisdiction to determine whether the employee has made a claim upon which relief can be granted, and the timeliness of the appeal;

(ii) The Human Resources Administrator may issue orders, prior to referring the appeal to the presiding officer, on any matter within his or her jurisdiction upon motion of a party or the Human Resources Administrator's own motions.

(f) Presiding Officer:

(i) The agency shall submit the name of a presiding officer mutually agreed upon by the parties to the Human Resources Administrator within five (5) days of the date of the notice of appeal;

(ii) If the parties fail to submit notification of a mutually agreed upon presiding officer within the time allowed, the Human Resources Administrator shall immediately refer the matter to the Office of Administrative Hearings;

(iii) The Human Resources Administrator shall transfer to the presiding officer the current record of the proceedings in the case.

Section 6. General Procedures for Personnel Appeal Hearings.

(a) Unless the parties stipulate in writing to an extension of the time period provided, the Presiding Officer shall render and file with the Human Resources Administrator a written decision and order containing Findings of Fact and Conclusions of Law, and shall provide written certified notice of the decision to all parties to the appeal within thirty (30) days of the close of evidence.

(b) Incorporation by Reference:

(i) The Office of Administrative Hearing Rules, Chapter 2, Contested Case Proceedings, edition October 17, 2014 is incorporated by reference:

(ii) The incorporated rule does not include any later amendments or editions;

(iii) The incorporated rule is maintained at the Department of Administration and Information, Human Resources division, Emerson Building, 2001 Capitol Avenue, Cheyenne, WY 82002 and is available for public inspection and copying at cost at the same location.

Section 7. **Consolidation of Multiple Actions.** If an employee has multiple, separate, or pending grievances or appeals involving the same employee and agency, those grievances or appeals may be consolidated into one proceeding upon mutual, written agreement, if the facts and nature of the actions so allow.